

Published for the Alumni
and Former Students of the
University of Oregon

Old Oregon

THIS ISSUE:

The Trial of
James Fullerton for
Criminal Libel Against
the University.

APRIL - 1919

An Affidavit

County of Lane }
State of Oregon } ss.

Personally appearing before me, a Notary Public in and for the County of Lane, State of Oregon, the undersigned, Eric W. Allen, deposes and says that he is Dean of the School of Journalism at the University of Oregon, and that previous to coming to the University he was a newspaper man of long experience and of that experience a great part consisted in the reporting and covering of the proceedings, pleadings and trials in the law courts; that he knows what constitutes a fair and full and true report of a trial, and that he personally attended court throughout every session of the trial of James Fullerton for criminal libel; and that the attached reports of the daily progress of this trial reprinted from the Eugene *Daily Guard* and the Eugene *Morning Register* constitute a full and fair and true report of this trial, and that no injustice is done to either side in this report, and that the facts are as stated.

(Signed) ERIC W. ALLEN.

Subscribed and sworn to before me this 8th day of March, A. D. 1919.

(SEAL) A. C. MCALISTER,
Notary Public for Oregon.
My commission expires January 20, 1920.

THE FULLERTON TRIAL

The Indictment

Reprinted from the Eugene Morning Register of February 21, 1919

James Fullerton, farmer and fruit grower, living two miles southwest of Eugene, is out under \$1000 bonds, charged with the crime of libel against President P. L. Campbell, of the University of Oregon, Dr. John Straub, dean of men at the University, Governor Withycombe, Secretary of State Olcott, State Superintendent of Public Instruction Churchill, regents of the University, and students of the institution. The grand jury Wednesday evening returned five secret indictments against Fullerton and while it was pretty generally known that the indictments had been returned it could not be made public for the reason that the accused was not in custody.

Sheriff Fred Stickles informed Fullerton over the telephone that he had been indicted, whereupon he agreed to come to the city. He appeared about 10 o'clock yesterday morning and at 11 appeared before Judge Skipworth for arraignment. Fullerton told the court he had no money with which to hire an attorney and Fred E. Smith* was appointed to defend him.

Hard to Get Ball

Fullerton had some difficulty in obtaining a bond, having first secured to promise of Dr. M. L. York to act as bondsman, but as the court required two men as sureties it was no easy task to find the second one. He telephoned to a dozen different men, Sheriff Stickles said, and finally Dr. F. W. Prentice consented to go on his bond with Dr. York.

*Mr. Smith later showed cause why he could not undertake the defense of Fullerton, and the court appointed H. E. Slattery in his place.

The alleged libelous utterances of Fullerton have been printed in the "Oregon Hornet," a small four-page sheet that he has been printing for nearly two years. He has it printed in Wisconsin for the reason, he says, that no printer here or anywhere in this part of the state would do the work.

Fullerton began his attack upon President Campbell and the University soon after the president refused to allow the skeleton of a whale, which Fullerton had brought in from the coast, to be erected on the campus. One of the reasons for the refusal was that several of the bones of the skeleton were missing.*

Invited Libel Suits

Fullerton, in his "Hornet," has been inviting libel suits against him, stating that he was ready to prove every statement he has ever made against President Campbell and the University, but it is said that he was greatly surprised that a charge of criminal libel was brought against him. He is said to have made the statement that he thought he would merely be sued for damages.

Fullerton will enter his plea this morning at 11 o'clock, and it is believed that the case will come up for trial at the term of court which begins Monday.

The five indictments as returned by the grand jury are as follows: For publishing on September 1, 1918, an article charging President P. L. Campbell with publicly condoning immorality at the University and calling the president a "common liar." The article further charges, the indictment states, that the board of regents of the University, consisting of James Withycombe, governor of Oregon, Ben W. Olcott, J. A. Churchill, R. S. Bean, William H. Gore, W. K. Newell, A. C. Dixon, Charles H. Fisher, James W. Hamilton, Mrs. G. T. Gerlinger, C. C. Colt, Henry McKinney and Lloyd L. Mulit, is allowing the taxpayers to be robbed unmercifully and asks for its removal. The indictment quotes the article as stating "we do not believe in allowing a few toughs of either sex to disgrace this great state institution and make it such a by-word all over the country that it is classed with houses of ill repute."

For publishing October 1, 1918, libelous statements concerning Governor Withycombe, President Campbell, the board of regents, the faculty and students of the University, charging that the governor refused to investigate "immoral conditions at the University, together with the graft and rottenness which are a stench before the entire nation."

For publishing on December 1, 1918, false and scandalous matter and libel of and concerning Dr. John Straub, calling Dr. Straub a "hun professor."

For publishing on December 1, 1918, libelous statements concerning President Campbell and the students of the University, charging that

*See page 8, Nov.

immorality is rampant at the University and is publicly condoned by President Campbell.*

For publishing on January 1, 1919, an article stating that President Campbell's word was worthless and declaring that he has a "spineless system" and "sissylike conduct."

University's Clean Record

Report of the first day of the trial, reprinted from the Eugene Morning Register of March 4, 1919.

The trial of James Fullerton, publisher of an alleged libelous pamphlet, the "Hornet," for criminal libel against the University of Oregon, its students and its president, P. L. Campbell, got a flying start yesterday in the circuit court before Judge Skipworth. At adjournment at 5 o'clock, not only had the jury been accepted, but the principal witness for the state, President Campbell, had been on the stand for an hour, testifying as to moral conditions at the University. The president swore not only that Fullerton's charge that "immorality was rife" was untrue, but that, as a matter of fact, moral conditions among the young people were extremely good.

Fullerton's Letters Introduced

While the state's evidence must go in first, and only afterwards will Fullerton have the opportunity to call witnesses in support of his charges, still yesterday much of the defendant's alleged defamatory matter was placed before the jury through the medium of numerous letters from Fullerton to President Campbell, which used up most of the alphabet as "Exhibit A, B," etc. It seemed that Fullerton had from time to time expressed himself in writing to President Campbell on much the same matters that appeared in the "Hornet," and that President Campbell and the regents had saved these letters. They were read to the jury by District Attorney L. L. Ray,† although they were admitted by Judge Skipworth "to prove malice and for no other purpose."

In the whole of his 17 years as head of the institution, in which time from 8000 to 9000 students had been under his care, the president testified, it had been necessary to deal with only four cases of immorality, and in not a single one of these was a college girl involved in any way.§ The men students in these four cases had been summarily dismissed, one

*This is the indictment on which Fullerton was tried and convicted.

†Oregon '12.

§In two instances young women had been advised not to come back to the University on account of conduct which, while not demonstrably wrong, was unconventional and might easily lead to misunderstanding and undesirable gossip.

for having contracted a venereal disease, and the others for acts that had nothing to do with their campus life.

H. E. Slattery, who is conducting Fullerton's defense under court appointment, scored a point when he obtained a ruling from Judge Skipworth to the effect that "immorality" was not necessarily confined to the commonest meaning of that word. Under this ruling President Campbell was being led, when court adjourned, through a long list of alleged or rumored stealing of flowers, profane swearing, chicken stealing, hazings and the ducking of freshmen, Sabbath breaking, fist fighting, and the like, running back through 17 years. In most instances President Campbell denied knowledge of any such event as the defendant suggested. In others he declared that offenses of the type mentioned were at a minimum.*

Defines "Immorality"

In his opening address Mr. Slattery had read many dictionary definitions as to what constituted "immorality" and stretched the all-inclusiveness of that word as including such minor breaches of any divine law as all persons, even the best, frequently fall into: "such men as you and I," he told the jury. He said every failure to reach the very highest ideals of conduct constituted a form of immorality. The court, without risking a definition itself, refused to rule out such evidence as might be offered on any kind of "immorality," permitting President Campbell to answer a wide range of questions.

Besides President Campbell, the only two witnesses heard yesterday were C. E. Sellon, a real estate man, and J. C. Price, shoe merchant, who identified copies of the "Hornet" as emanating from Fullerton. Their testimony was preceded by the opening statements of counsel: J. L. Hammersley, of Portland, representing the attorney general of Oregon, who is taking part with District Attorney Ray in the prosecution, and Mr. Slattery.

Mr. Hammersley promised that the state would not only show that Fullerton's charges were malicious and untrue, but would call witnesses to establish the system by which the University maintained close moral supervision over its students. He told of the University's growth in the 17 years it had been under President Campbell's charge, from 257 students to 1114, from an income of \$58,000 to \$570,000. He told of the gallant war record of the institution, and he gave figures to show that four-fifths of the students came from outside Lane county; were here really as the county's guests; and he told the jury it was their function to see that these students were protected from attempts to destroy their reputations and defame their names.

*At the end of the trial, Judge Skipworth, in his instructions to the jury, told them that no evidence whatever had been introduced tending to prove fighting, drunkenness or Sabbath breaking.

Keeps Close Hand on Students

To show that the University kept a close hand on the moral interests of the students, the president was led by the attorneys for the state into an explanation of the elaborate system the University has created for maintaining high standards of student life. He told how the faculty kept in touch in a personal way with the individual student, each young man or woman having his own faculty adviser, also the dean of his own college of school, who is responsible for his conduct and well being. In addition to this are the dean of men, dean of women, the faculty disciplinary committee, the officers* of the national fraternities, who pay periodical visits to the campus, the faculty members affiliated with the houses, the house organizations themselves, headed by seniors, in the case of the girls the "house mothers," and the elaborate machinery for physical exercise and for supervision through athletic directors, all of which co-operate with the Y. M. C. A.† and Y. W. C. A. and the churches.

The students come from good honest Oregon homes, the president said, most of them with the best early training. They have to be recommended by their high school principals as of excellent moral character as well as being adequately prepared intellectually. Many of the students are mature, most of them church members or attendants, and altogether they represent a high type of young men and women, he testified. At the University they live a self respecting, busy life, giving practically no trouble to the authorities or to the local community. In the democratic environment of the campus, he said, so far from going to pieces, they develop moral strength and control.

Students Morally Safeguarded

*Report of the second morning of the trial from the
Eugene Daily Guard of March 4, 1919.*

The trial of James Fullerton for criminal libel against the University, its students and its president, P. L. Campbell, continued this morning with the submission of evidence by the state, which has undertaken to show not only that the charges that "immorality is rampant" are untrue, but that moral conditions are unusually good. Judge Skipworth refused to allow D. Walter Morton, dean of the school of commerce and president of the discipline committee, to make a detailed comparison between moral conditions at Oregon and at the large list of other universities with which he had been connected. Dr. Morton, however, managed to say that conditions were better than any he had known at Dickinson University,

*There are men of the highest standing, President Campbell testified, and include leading bankers, business and professional men and clergymen. They are all mature men, alumni, not students. They visit all chapters in the United States.

†Both Y. M. C. A. and Y. W. C. A. maintain paid secretaries on the campus, who devote their whole time to work among the students.

University of Pennsylvania, Drew Theological Seminary, Eastburn Academy, Millikin University, University of Illinois, Berea College, or the University of Wisconsin.

President Campbell Testifies

President Campbell was the first witness this morning, continuing his testimony of yesterday. He testified as to the "whale* incident," which the prosecution maintains was the original cause of Fullerton's alleged malice against the University. The institution refused four or five years ago to accept a large and malodorous marine skeleton Fullerton had brought from Florence and wanted the University to set up on the campus for use as the frame of a tea house. The president also instanced various unsuccessful attempts by Fullerton to obtain a commission from the University as biological collector.

Dean Morton told of two instances of discipline of men students in which two men students had been made to leave the University. He testified that the University never failed to investigate even the vaguest rumor, that real misdeeds were extraordinarily few, were never condoned and that no disciplinary case had involved any woman.

Dean John Straub, dean of men, gave testimony covering the whole period since 1878. No University girl in the institution's history has ever

*The "Whale Incident," which is repeatedly referred to during the trial of Fullerton, was "featured" at the time by newspapers in many parts of the United States. Fullerton's resentment at the refusal of the University to accept the whale and at the public amusement which followed, was alleged by the State to be the original cause of his "malice" against the University which the State undertook to prove as one of the elements of criminal libel. The climax of the "Whale Incident" was described as follows in the Eugene Daily Guard of January 27, 1915:

A dead whale is worse than a white elephant. So says the University of Oregon.

"I wish it was a white elephant and alive; we could take it out in the woods and shoot it," said L. H. Johnson, head of the business office of the University, who has issued the edict that the whale is not to come on the campus, at least in its present condition.

The whale arrived in Eugene on the Willamette Pacific last night. It was the same whale that washed up on the beach of Lane county many months ago, and which aroused the public spirit of James Fullerton, who raised money among the students and business men of Eugene to have it brought to the University museum.

In view of the fact that it died some time ago, and had not been in cold storage, there is but little left of the whale except the bones. But there is enough whale left to herald, for some little distance, the coming of the train that brought it. During the night, as the box car was side-tracked beside the freight warehouse, the whole vicinity was aware of its arrival.

This morning the University was very promptly notified that a carload of whale was at the station awaiting disposal. A few moments later consternation ruled.

"The University don't want their whale," exploded Jake Koupal, freight foreman, over the telephone to A. J. Gillette, agent, who had not yet realized the seriousness of the situation.

"Well, I guess you can have it, Jake," he replied.

During the day an imaginary line was ruled about a considerable area around the car, and it became sacred territory within. No one trod therein except the unwary one, who was watched with interest as innocent curiosity led him on.

"The University has had a good many cases of junk shipped in on it, some of them charges prepaid, but this takes the cake," popped Mr. Johnson, of the University. "In this case the charges were prepaid, all right, but we'll never accept that odor."

"We didn't order any whale; the man that brought it here did so on his own initiative and it's up to him to dispose of it. I'll never approve of bringing that thing on the campus in the condition it's in."

Mr. Fullerton is undaunted by the near-sighted protest and took steps this afternoon to unload his mammal. Time, he feels, will remove the objections, and dedicate to the University museum the bones of a real whale upon which posterity may gaze in wonder.

"gone to the bad," he said and this, he maintained, was a surprisingly clean record considering the large number of students. Of drunkenness there had not been a single disciplinary case in ten years. Students were well protected and were so housed and lived under such associations that irregularities such as charged in the "Hornet" could not occur with impunity.

No Trouble to Authorities

R. S. Bryson, county clerk, who has just finished a six-year course as city recorder, testified that the trouble given the city authorities by students was negligible. He could only remember four cases. The most serious one involved an officers' training camp man and not a student. No University woman had ever been involved in any way.

Ex-Sheriff D. A. Elkins gave much the same testimony. He was also asked if he had ever received complaints of misconduct on the millrace and whether he had investigated them. He said he had and no students had been involved. Each complaint had turned out to refer to people not connected with the University. One man student had been involved in a serious charge in his term of office. It was a Springfield case and had to do with a Springfield woman. No University women were ever in question.

Herald W. White, of Cottage Grove, a student and president of the student body, told of student life at the University.

Other witnesses late this morning were Rev. C. E. Dunham, pastor of the Baptist church; G. B. Hill, of Oakland; C. O. Peterson, mayor of Eugene, who lives near the millrace; C. K. Hale, of Noti, and Jack Dundore, of Portland, a student.

After luncheon the state called W. R. Rutherford, superintendent of schools, to testify as to the general good behavior of the University students. He said he never hesitated to advise his high school students to enter the University and hoped to send his own boy.

The "house mothers" of all the sorority houses have been subpoenaed and were waiting to testify this afternoon. The first called was Mrs. A. G. Barker, of the Alpha Phi house, who told of the strictness of the rules under which the sororities are governed and of the excellence of the moral tone prevailing.

Miss Louise Ehrmann, dean of women, was the next called and testified that she was in a position to know more than any other woman about conditions on the campus, and that the Fullerton charge that "immorality was rampant" was a falsehood. She told of the system of chaperonage under which every girl in the institution is under the supervision of some older woman. She was followed by Mrs. Edna P. Datsou, manager of Friendly Hall and by Mrs. M. F. Chatfield, of Delta Gamma.

University Earns Respect

Report of the second afternoon of the trial, reprinted from the Eugene Morning Register of March 5, 1919.

The University of Oregon has a close supervision over the life of every student, man or woman, and maintains all the machinery necessary for full control and complete information as to their activities, according to the case which the prosecution spent the entire day yesterday in laying before the jury in Judge Skipworth's court, where James Fullerton is on trial for criminal libel against the institution, its students and its president.

Fullerton himself fell sick in the middle of the afternoon and asked for a delay in the trial, but Judge Skipworth allowed only a 15 minutes' recess, after which H. E. Slattery continued the defense in his client's absence.

The state's effort to make a complete showing necessitated the calling of an immense number of witnesses. The case for the prosecution will not be all in until about noon today, after which the defense will be heard. Fullerton will take the stand, but not as the first witness.

District Attorney L. L. Ray and J. L. Hammersley, representing the attorney general, undertook to show the jury through the testimony of the witnesses how complete a check the University has on the actions of the young people under its control. The day was devoted to deans, officials, housemothers, clergymen, heads of fraternities, officers of religious and other organizations among the students, and including many students themselves. The attempt was to show that there was not a single student left in a position where he or she could go seriously wrong without the authorities hearing of it promptly through regular channels devised for the purpose.

First the deans of the disciplinary committee, John Straub, dean of men, D. W. Morton, dean of commerce, and Miss Louise Ehrmann, dean of women, told about the University's system of discipline and supervision, and under cross examination by Mr. Slattery answered questions regarding every case of alleged or suspected immorality that had come to light since Dr. Straub entered the faculty on November 7, 1878.

Not One Girl Has "Gone Wrong"

Dr. Straub told of his duties as dean of men and adviser to the freshman class, and of the intimate contact with the students this involved. He said he was responsible for their studies, their housing, their welfare and their moral tone.

"In all these years since 1878," he testified, "not one single University girl has 'gone to the bad.' I cannot but be surprised at the fewness of the cases of immorality that have occurred in this time. Some few men have been dismissed for immorality, but never for a case in which a University woman has been involved. Fullerton's charge that 'immorality is rampant' is absolutely false." Every witness was asked as to the truth

of the charge, and in each case a vigorous negative was given. When the women witnesses came on in the afternoon the denials were made with evident signs of indignation. Some of the men students, too, found a simple "no" inadequate to express their feelings.

Dean D. Walter Morton testified that he had been connected with Dickinson University, University of Pennsylvania, Drew Theological Seminary, Eastburn Academy, Millikin University, University of Illinois, Berea College and the University of Wisconsin. He told the jury before the court could stop him that moral conditions at Oregon were better than in any of these institutions. He said the practice of the disciplinary committee was to investigate every single rumor, no matter how vague.

Miss Ehrmann described the elaborate system of house mothers, heads of houses, and chaperones, to which every girl not living with her parents is subject in one way or another. The defense made almost every witness admit under pressure that of course some things might happen among 1100 students and the witness not find out about them. Not so Miss Ehrmann. She had confidence in her system and in the thoroughness and accuracy with which it works, as well as the spirit of cooperation shown by the girls in aiding University discipline.

House Rules Described

After the system of discipline was described, the prosecution began the lengthy task of calling those responsible for every separate student group, which together constitute the entire student body. Each house mother was led to describe the house rules, the construction of the houses, her means of supervision, the girls' hours and their general conduct. The general argument was that no case could happen that Fullerton or anyone else could find out about but what would come to the knowledge of the University itself.

Mrs. A. G. Barker spoke for the Alpha Phi house, Mrs. Edna Prescott Datson for the non-fraternity girls, Mrs. M. F. Chatfield for Delta Gamma, Mrs. L. F. Johnson for Kappa Alpha Theta, Miss Camille Dosch for Kappa Kappa Gamma, Mrs. S. W. Benson* for Pi Beta Phi, Mrs. Arthur Cox for Delta Delta Delta, Miss Inez Johnson for Chi Omega, Mrs. H. W. Weir for Gamma Phi Beta, Miss Gertrude Talbot for Hendricks Hall, Miss Dinsdale for the University Y. M. C. A. and the girls working their way, and Miss Ehrmann for the girls living at home. All these witnesses have no other duty but to look out for the girls. To it they devote their whole time. Each has only a small group, every girl in which she knows intimately, and between them they exercise jurisdiction over every female student, and are required to know positively her whereabouts at every hour of the day or night.

Clergymen Are Witnesses

Several clergymen were also called. Rev. A. M. Spangler, of the Congregational church, testified he knew conditions thoroughly and sent his son and daughter to the University. Rev. C. E. Dunham, of the

*Widow of Governor Benson.

Baptist church, also expressed confidence in the University. The defense tried to make him say that University teaching tended to shake the student's faith in the Christian religion, but he refused to assent, admitting only that sometimes they changed from one denomination to another. Rev. E. C. Sanderson, who is president of the Eugene Bible University and lives next to the University of Oregon, said he knew many students and was in a position to testify that conditions were good. Every witness was asked as to the moral character of President Campbell, the truth of Fullerton's charge that "immorality was rampant," and in each case the witness upheld the contention of the University, sometimes with considerable heat.

Many men and women students were called in the afternoon. Men from each organization were asked in what esteem University women were held. The answers were that they were most highly esteemed and held in the highest respect. It developed that all the houses had rules absolutely barring all conversation critical of women. In one case Harold Gray, representing Phi Gamma Delta, wasn't sure whether it was a house rule or a universal gentleman's rule. He said it was never violated; that it was an unwritten law that all scrupulously respected.

"Blankets" Are Robes and Rugs

On cross examination, the defense developed a line of questioning in each case about going out with "blankets," meaning Indian robes and steamer rugs. The testimony was that these were necessary in canoeing, because the girl sits on the bottom of the canoe, and would ruin her dress if there were no rug. The defense tried to get some other interpretation from witnesses, but failed. Rugs are also used at picnics as tablecloths and to sit on, the witnesses said, but denied the reiterated suggestion that Hendricks Park was a favorite place or late in the evening a usual hour. The hours at which girls had to be home were shown by many witnesses: half past nine on week nights. Also the system of chaperonage was explained at length.

Among the men who testified were Jack Dundore, of Portland; Captain Miles McKee, of Albany, a law student living at Friendly hall who was hoping to send his two sisters to the University; Douglas Mullarky, of Redmond, editor of the Emerald; Harold Newton, of LaGrande, in a sailor's uniform, just back from the Antipodes; Morris Morgan, of Portland, and Don Belding, of Grants Pass, just back from France. The soldiers and the sailor were good witnesses, if they did put a little over-emphasis into their answers in which they said what they thought of the charges.

Dr. W. B. Neal testified he was a surgeon for the S. A. T. C. and had examined every man. There was no case of proved venereal affection in the whole unit of over 500 men. One case was suspected but the microscope test failed to prove anything. The man was not sent away because the Washington authorities, consulted by telegraph, ordered otherwise. Not a single request for prophylactic treatment was made,

although failure to do so in case of exposure meant severe army punishment involving court martial and imprisonment if discovered.

Colonel W. H. C. Bowen, the commandant, also testified along the same line. W. R. Rutherford, city superintendent of schools, gave the University a good name for morality. He said he advised his high school students to attend the University and intended to send his son. He lived near the campus and said he knew conditions well.

Among the girls who testified were Miss Ella Dews, of Klamath Falls, vice president of the associated students; Miss Dorothy Flegal, of Portland, whose father, Austin F. Flegal, is head of the Oregon Social Hygiene society, which is credited with making Oregon the cleanest state in the union according to statistics of venereal disease in the army; Mrs. Emma Wootton Hall, whose husband, Elmer Hall, is a lieutenant of marines in France, and Miss Essie McGuire, of Portland, head of Hendricks hall and president of the Y. W. C. A.

The Collapse of the Fullerton Case

*Report of the third morning of the trial, reprinted from
the Eugene Daily Guard of March 5, 1919.*

The state rested its case against James Fullerton for criminal libel about the middle of this forenoon's session in Judge Skipworth's court, and before noon nine witnesses for the defense had been heard.

In numerous instances H. E. Slattery, Fullerton's counsel, was the victim of "surprise," the legal name for the situation which arises when a witness fails to give testimony which had been expected of him. That part of Fullerton's charges against moral conditions at the University which was to be based on the testimony of jitney drivers fell down altogether so far as the morning's hearing went. J. F. O'Brien, proprietor of the "U. of O. Jitney," and Bruce Kneeland, formerly one of his drivers, testified that their cars were largely patronized by students, but only for perfectly legitimate purposes.

Clarence Fritz, a Fairmount boy, was on the stand just before luncheon and gave testimony as to having seen a couple in a criminally compromising situation on the island north of the mill race, in June two years ago. He said this was in the day time, on a public path, open to the river. The state this noon was planning to introduce rebuttal testimony*

*Registrar A. R. Tiffany produced University records the next day and proved that the student named was not in the University during the year in which young Fritz testified the incident occurred. The man himself lived at a distance from Eugene and could not be produced as a witness.

Although the man named in the evidence could not be produced at the trial, it is perhaps not unfair to say that he wrote to the University a sweeping denial of the charge. In addition, his letter contains the following paragraph:

"If the information will do you any good at this hour, I will say that I have been in Eugene but three hours since May, 1915. The three hours, or approximately, were in April, of 1917. All of which assures my being absent in June two years ago—in either 1916 or 1917."

The defense also called B. L. Bogart, who told of his automobile having been taken from his place without authority about ten years ago. He was pressed for further testimony derogatory to University people, but declared he had none to give. John DeLay said students had taken about \$5 worth of lumber from him for a bonfire eight years ago and that this had never been paid for. Walter L. Bower, a street car operator, said he had seen students with Indian blankets out late at night in the Chula Vista district. He didn't know whether they were Eugene residents or not. They were walking along the sidewalk. Mrs. Doris R. Crosby, who lives near the mill race, said she had once seen a young couple reclining on an Indian blanket. They were doing nothing improper, but she did not believe a nice girl would be there, and she didn't approve. Isaac Huggins, who used to live near Hendricks Park* nine years ago, said he used to see students passing the place carrying Indian robes. To his mind it appeared this could be "for no good purpose." Arthur Ritter, a student, was made to recite again the story of how he had stolen a chicken about a month ago when the fraternity which was initiating him had instructed him to "obtain" one and his money turned out to be short. Ritter's case had been dealt with by the city recorder.

Mothers Give Evidence

Mrs. Robert McMurphey was called for the state early this morning. She said she was a University graduate herself, had sent her two daughters through the institution, frequently visited the campus herself, knew many students, understood conditions thoroughly, and declared that she heartily approved of the way things are being conducted.

Mrs. F. L. Chambers, wife of the president of the Chambers Hardware Company, gave much the same line of testimony. She was subjected to an embarrassing cross examination by the defense, which tried to discredit her testimony and force her to explain what were the opportunities for knowing about immorality for one living on Eleventh avenue as compared with people living out beyond the University. Mrs. Chambers held her own, maintained that she knew as much as anyone could know about things, and had gladly sent her daughter through the University and would do so again.

W. W. Calkins, of the United States National bank, had sent three children through the institution, including a daughter who had graduated a year ago. Mrs. F. M. Wilkins had sent four daughters through the University, and had never regretted it. She knew conditions well. Mrs. Thomas Bailey had sent both her son and daughter to the institution. "If I had a dozen children, they should all go," she declared to the jury. She said she took especial pains to be well informed about conditions.

*Hendricks Park is a beautiful woodland tract on a hill top, donated to the city some years ago by the Hon. T. G. Hendricks. It has no evil connotations whatever, although the defense in its questioning sought to imply there was something sinister about it.

Several students were placed upon the stand early in the session to testify to the general good behavior of the University students. Among them were Charles Comfort, of California; Irving Smith, of Redmond; Sophus Winther, a graduate student who lives about five miles out of Eugene; Lieutenant Richard Avison, son of the prominent Salem clergyman who is to preach the funeral sermon over Governor Withycombe tomorrow, and Lieutenant Stanford Anderson. The last named testified to the fact that the fraternities were not governed by considerations of wealth. He appeared in a natty uniform with service bars and aviation wings, and his story gave the facts as to how he earned his living by sweeping out the Chamber of Commerce rooms, cleaning spittoons and doing other menial tasks, being meanwhile a member of one of the best fraternities on the campus.

Fullerton's Own Testimony

*Report of the third day of the trial, reprinted from the
Eugene Morning Register of March 6, 1919.*

James Fullerton went on the witness stand in Judge Skipworth's court yesterday and answered questions which were designed to show just how much or how little foundation he had for the repeated assertions he has made that "immorality is rampant" at the University of Oregon. Fullerton is on trial for criminal libel, an offense for which the maximum penalty is a year in the county jail. The case will go the jury today. There is one more rebuttal witness for the state.

Fullerton's memory proved excellent for every scandalous rumor anybody had ever told him, but when it came to the name of the person who was his source of information it usually turned out that he had forgotten. Everything of a scandalous nature that he had ever printed in the "Hornet" had been upon hearsay, he told the jury. It had usually come to his ears, he swore, from people whom, from their looks, he had regarded as responsible citizens.

The only case of immoral conduct he had any personal knowledge of himself, he testified, was a spectacle he said he had shared with a student in the law school of the University. He had forgotten the student's name and had lost a letter he said he had once received from him. The incident had to do with something he wanted the jury to believe the two had seen from the window of a certain fraternity house near the campus.* Fullerton manifested great delight in the alleged spectacle on which he said he had feasted his aged eyes. He testified that he would like to be there yet, if the spectacle had continued, for said he, "I believe in living statues," and his sole and unaccompanied laughter resounded throughout the silent courtroom. The defense closed its case without bringing any evidence to

*See page 22, NOTE.

corroborate one of the most remarkable assertions ever made in a local court of justice.

Quality of Citizenship Questioned

As Fullerton's cross examination drew toward its end the defendant was led to testify as to his purpose in making his reiterated charges against the students at the University. He said that he was acting only as a citizen, with the interest of the public at heart. To test the quality of the witness's citizenship, J. L. Hammersley, of Portland, representing the attorney general, led Mr. Fullerton to comment on a paragraph in his book, "The Antobiography of Roosevelt's Adversary," in which he told of his joy on re-entering Canada and seeing the good old Union Jack waving overhead. He explained that this had been justified by his trouble in Montana, where the people of that state, more or less instigated by President Roosevelt, had thrown him into an asylum for the insane. At that time he had been an American citizen for years, but on account of what he termed the vile and unjust treatment he had received he was glad to leave the country. Asked to explain further, he burst out with the statement that he had been subjected to the same kind of "persecution" then that he is undergoing now. "And I'll tell you one more thing," he shouted, "if I ever get my feet out of the mud of Eugene, I won't be an American citizen more than a week. I'll go back under the old flag where they don't persecute people."

Fullerton gave the jury a history of his life. He is 65 years old. Born in England, he lived there until he was about 16, and was educated there in a well known college. He was 11 years in Manitoba, and since that time has been a wanderer, staying about six years in a place. He has lived in Texas, Minnesota, Wyoming, Colorado, Montana, Seattle and Eugene, besides England and Canada. Four times, he said, he has entered upon a great moral crusade to improve the conditions he found in the community in which he happened to be living, just as he has undertaken to clean immorality and graft out of the University of Oregon. One of these was in the Big Horn country in Wyoming, one in Montana and one in Seattle. When asked what had brought him to Eugene, he replied: "The Lord only knows. I wish he hadn't done it."

Fullerton started out when he first went on the stand to argue points of procedure with Judge Skipworth. The inadvisability of this was

*The following letter to the Editor appeared on the editorial page of the Eugene Morning Register of March 9, 1919:

BRITISH EMPIRE DEFENDED

EUGENE, Ore., March 8.—(To the Editor)—As recent laudatory statements at a notorious trial would tend to place the British empire under a cloud, may I take up the cudgels on behalf of my native country?

In no part of the British empire are people so kindly to long-suffering as the people of Oregon; in no part of the British empire would people have ignored a series of malicious criminal libels on their women, extending over a period of some two years, simply because they were made by an elderly and unbalanced person; in no part of the British empire would 12 months in jail be considered an adequate punishment for a series of cowardly and entirely baseless misstatements, provoked purely by malice, and revealing a depth of politeness, obscenity and menadacity that must surely be without parallel in the criminal records of this or any country.

JOHN LEADER.

promptly made apparent to the meanest intellect, and the witness desisted just in time to spoil a good performance. Barring any attempts to get chatty with the bench, however, the court allowed the witness a wide latitude, and Fullerton related what he knew and what he suspected and what he had heard about almost everything in the "Hornet." The state made no attempt to object to anything Fullerton wanted to say when once assured it would be allowed to rebut any new matter that might be brought out.

The day was largely devoted to the question of Indian robes and steamer rugs, and to the different kinds of inferences different kinds of minds draw when seeing canoe or picnic parties carrying such blankets along a street.

A clean spot in a dirty day came when a fresh young country boy, Otto Zinicar, who used to live south of Spencer's Butte, testified that on the day of the cougar incident,* upon which Fullerton had placed a smutty interpretation, he had as a matter of fact imitated a cougar's cry with the purpose of scaring his sisters.

"All right, give a cougar's cry now, to show that you can do it," said H. E. Slaterry, attorney for the defense. Judge Skipworth saw no harm in the proposal and ordered the boy to go to it. Otto apparently tried, but a state of extreme embarrassment before several hundred listening people was not a favorable environment.

"I never heard a cougar," he told the court.

"Very well, we've heard enough about that cougar, anyway," was the court's ruling.

Boys' Testimony Weak

Fullerton put several half-grown boys on the stand to testify as to students' conduct up the mill race and at various picnic grounds. Among those testifying were Virgil Storer, who for some reason failed to demonstrate why the defense should have called him; Clarence Fritz, a boy who gave the only direct alleged evidence of immoral conduct in the whole trial, unless an exception were to be made of Fullerton's own story of the alleged sight† he said he saw from a fraternity house window where he was standing with a law student whose name he had forgotten; James Storer, 16, who once saw a couple reclining on a blanket, but who could draw no inferences as to who they were. He did not testify to anything improper.

A youngster named Russell Ashby, had seen something bad, he said, but had forgotten all the circumstances. He didn't know who the offend-

*Two young couples, lost on Spencer's Butte, in January, five years ago, wandered into Creswell early the next morning footsore and bruised by wandering among the rocks in a storm. They reported they had been frightened by a cougar's cry and had spent most of the night in a tree. The incident was more or less humorously treated in the Portland and Eugene papers. It was investigated by the deans at the time and no damaging facts were found.

†See page 22 and footnote.

ers were, how they were dressed, whether they were students, or how they acted, when it was, or how it happened he had seen it.

Besides the large number of persons from whom Fullerton had collected rumors and whose names he had forgotten, he said he had learned damaging facts from one Zach Parsons, of Springfield, and one William Hunter. The defense called Hunter's name in the courtroom once or twice, but closed its case without asking an opportunity to hunt up the lacking witnesses.

Besides the cougar story, Fullerton retold the whale incident at length. This is the event that the state alleges is the cause of the malice which it maintains Fullerton has shown against the University. As to malice, however, just before adjournment Judge Skipworth announced that he would rule that the publications complained of were of a nature to constitute libel *per se*, in which case malice is presumed by law and doesn't have to be proved by the prosecution.

Graft Is Denied

In Fullerton's testimony he brought in some new matter not complained of in the indictment, alleging graft on the part of A. C. Dixon and the Booth-Kelly Lumber company in making profit out of University contracts for fire wood. It was shown in rebuttal, on the testimony of President Campbell and Mr. Dixon, who is a regent of the University, as well as manager of the company, that neither oil nor coal was a practicable substitute for wood as fuel for the University; that all fuel was bought on sealed bids; that sometimes Booth-Kelly was the successful bidder and sometimes not; that the company bid reluctantly; that it had made no profit out of the contracts as a whole, and only 8 cents a cord on the most profitable one, and that the smaller contractors who had furnished the wood some years had thrown up their contracts and Booth-Kelly had been appealed to by the bondsmen.

Mrs. Elizabeth Prescott testified as to the banquet invitation which Fullerton had made the basis of a charge of lack of veracity against President Campbell, who, he asserted, had practically insulted Mrs. Prescott. Mrs. Prescott's interpretation was entirely different. She said President Campbell had not even known of the incident until afterwards.

Attorneys Analyze Evidence

Report of the fourth morning of the trial, reprinted from the Eugene Daily Guard of March 6, 1919.

The case of James Fullerton, on trial in Judge Skipworth's court for criminal libel against the students and officers of the University of Oregon in charging that "immorality was rampant" at the institution, was nearly ready to go to the jury early this afternoon. The case for the state had been summed up by District Attorney L. L. Ray, and Fullerton's lawyer, H. E. Slattery, had entered upon a plea for his client.

Fullerton should be freed, Slattery maintained, because, among other reasons, he was an old man, and sick. If the jury found the defendant guilty, he declared, it would be the equivalent of passing a death sentence upon him. A term in the county jail, he said, might cost him his life. Mrs. Fullerton, who has not been seen there before, was brought in this morning to take her place at the defendant's table in the court room. Mr. Slattery wept copiously and did not try to hide his appearance of emotion from the jury, as he described his client's attempt to better moral conditions at the University. This, he said, was typically heroic and British. This was followed by a long list of the virtues of the British empire. He maintained that his client had been entrapped into an outburst against American institutions and in favor of British yesterday in order to prejudice against him any Irishman there might be on the jury.

Ray Sums Up Case

Mr. Ray's summing up for the prosecution, which occupied the main part of the morning session, was a careful analysis of all the evidence presented. The district attorney called attention to the high character of the witnesses for the state and the completeness of their testimony, and to the fact that the defense had based nearly all the assertions complained of upon vague rumor and hearsay statements which Fullerton had not even attempted to investigate at the time and had no witness to prove now. Furthermore, he showed that the defendant was unable to prove in court even that he had heard many of these rumors and had not imagined them. Fullerton had forgotten the names of the persons who had told him.

Mr. Ray rose to considerable heights of eloquence in indignant protest against the only thing resembling or indicating immodesty Fullerton testified he had ever known about personally and not through rumor. This was a Peeping Tom incident Fullerton swore yesterday he had greatly enjoyed, but which he offered no corroborative evidence to prove, saying he had forgotten who was with him at the time and whose testimony might have proved whether Fullerton was telling the truth.

Prosecution's Case is Described

Mr. Ray described the case of the prosecution: how the state had determined to show affirmatively that moral conditions were good. It would not be necessary for Fullerton to prove the truth of his charges; the state would undertake to prove their falsity. For that purpose they had gone over the whole University, had testified as to conditions in every single student group, had brought to the stand every person connected with the disciplinary system and had offered them to the defense for cross examination.

He told of the theory on which the law of criminal libel is based; how it aims to furnish a legal form of punishment for the publishing of matter of a type which would otherwise result in violent resentment or riots. "The best evidence," he declared, "of the genuine control exercised over these students by President Campbell and his faculty is the fact that they

have up to this time been prevented from acting upon their natural manly resentment of the contemptible lies that the defendant has spread about their sisters, their sweethearts and their friends.

"Now is Time"

"I am district attorney, charged with enforcing the law. I tell you that if you acquit this defendant, and deny all these young people any chance to vindicate their reputations, I will not be responsible for what may happen, for I shall have done my duty.

"I have been district attorney for all the 22 months these pamphlets have been published. We have been very patient. The defendant has asked for a libel suit. He has declared he desired a chance to testify in court. He has published this request in his 'Hornet.' We have waited all this time. We have waited and waited and waited for this old gentleman to quit. And now his time has come and he has no evidence to support the outrageous charges he has made against all these fine young people, these pure girls and these brave young men.

"One Recourse Open"

"He has grouped them all together. He has made a general charge. If he had named anybody, there could have been an action of a different kind, but he has chosen to make all his accusations broad, vague, besmirching every member of the institution, blackening the names of the purest women. There was only one recourse—it was for the state to act."

The only witness called today was J. H. Parker, caretaker at Hendricks Park. He testified that he watched closely the people who use the park that that the students who occasionally picnic there always acted with entire propriety so far as his extensive knowledge went.

Fullerton Found Guilty

*Report of the fourth day of the trial, reprinted from the
Eugene Morning Register of March 7, 1919.*

"Guilty," said the verdict in the case of James Fullerton, which was brought in at 8:45 last evening in Judge Skipworth's court. "Leniency for the old man" was the wording of an accompanying recommendation which the jurors submitted to the court. Fullerton's offense was criminal libel against the president and students of the University of Oregon in charging that "immorality was rampant" at the institution. The penalty runs up to a fine of \$500 and a year in jail. The judge has the right to suspend sentence, if he interprets "leniency" that way, and to do so on any terms that seem good to him. Counsel made the usual motion for a new trial, and this will be argued Saturday morning.

Five other indictments against Fullerton are still outstanding, one for calling President Campbell a "liar," one charging graft, one for calling Dean John Straub a "Hun professor," and another one substantially like the one for which Fullerton has been convicted. Under the liberal rulings

of Judge Skipworth the evidence in the case just ended covered the facts in each of these except the "Hun professor" charge, and District Attorney L. L. Ray declares that convictions are equally obtainable on these indictments because Fullerton, if he had any evidence, would have introduced it already.

The extreme difficulty of obtaining a conviction in a criminal libel case was increased in the present instance by the decision of the state to stand or fall on a request for a straight verdict, without any promise of clemency, and also by the advanced age of the defendant, which was cleverly dramatized by H. E. Slattery, Fullerton's lawyer. In the course of the trial Fullerton left the room several times, giving illness as his reason, and the attorney called attention each time to the fact and emphasized it in his closing remarks.

"Tottering to His Grave"

"The old gentleman is tottering to his grave," he said, with all the evidences of sincere grief. "His hair is white. Year by year and month by month death approaches. He is weak and tottering. Gentlemen of the jury, will you brand this old man, who is not long for this world, whose hair is white as the driven snow, and who is sick, and who is tired, I ask you, gentlemen, will you brand him as a criminal, and bring sorrow to his loving wife and his children, two noble sons in the service and a daughter who is a Red Cross nurse serving her country? A verdict of guilty in this case is the equivalent of a sentence of death. He may not live out a term in jail."

Mr. Slattery's voice took on a tremulo and then faltered and broke and he wept into his handkerchief. Fullerton himself sat at the attorney's table, all his old defiance gone with which he had threatened officials from the governor down and dared all to come on and start a libel suit and thereby meet with their own undoing.

The old age plea was the thing that held up the jury from 4 o'clock until nearly 9 last night according to the jury's own statement, for of evidence against the University or its students there was practically none. In fact, even most of the cases of discipline which were put in evidence were placed there by the University witnesses themselves; for the state had announced the policy of making a clean breast of everything, of telling the whole history of discipline at the University since 1878, and in pursuance of this policy had told of unfortunate cases of which Fullerton had never even heard.

At the beginning of the trial the state announced that it would accept the defense's interpretation of the law and would undertake the task of proving affirmatively by competent evidence that the University was a clean and moral place. This is much more difficult than simply refuting specific testimony.

Close Supervision Over Students

No university could have undertaken such a vast enterprise if it had lacked a thoroughly worked out system of supervision or if there were

any skeletons in its closets. But the University of Oregon demonstrated to the jury not only that the students were moral, that conditions were excellent, that the atmosphere was clean, but that the University was in a position to know what state of affairs existed, that no looseness could occur without its knowledge, that it had a thorough check on every individual student, and that as a matter of fact for 40 years surprisingly few unfortunate incidents had occurred. Those that had occurred it frankly admitted, without mentioning names, and the entire showing so impressed the jury that not even the clever use of the plea of old age and decrepitude availed the man who had blackened the names and fair repute of the young men and women in the obscene publication, the "Hornet" which he has hawked about on the streets of Eugene, and which he has mailed to officials and citizens all over the state, and circulated otherwise after it was barred from the mails.

District Attorney Ray delivered an address in summing up the case for the jury that will be a classic in the annals of the Lane county bar. He was stung to a high pitch of anger by aspersions* made by Fullerton at the trial without previous publication in the "Hornet" against a group of young women Ray himself knew well in a social way, and for over two hours he held the court room tense with his eloquent contrasting of the evidence for the state with the hearsay and unsubstantiated rumor adduced by the defense. When he ended the audience was tense, and the effect on the jury was evident.

Instances of Pranks Admitted

The only items the defense brought out that were not founded on rumor and hearsay were a few admitted instances of pranks and minor offenses that had already been dealt with by the authorities and given publicity at the time they occurred, and two alleged instances of things young town boys asserted they had seen. In one case it was proved that the student mentioned (a man) had left the University prior to the time alleged, and in another the witness proved to have the kind of memory and power of observation that made his evidence of little or no value. The defense did not even take the trouble to rebut. The other was Fullerton's own story of a Peeping Tom exploit* of his own. Fullerton said another man had been with him at the time but he couldn't remember who it was, thereby denying the state the opportunity of checking up on the truth of his statement. Mr. Hammersley told the jury he would leave it to the jury's own good sense and knowledge of human nature as to whether this latter was not simply the creation of a wicked imagination, whether it was not one of those things which in the nature of the case simply could not have occurred.

Hammersley in Straight Talk

Mr. Hammersley, in the closing address to the jury, made a straightforward, man to man talk to the jurors, showing them how there had been

*Fullerton's testimony charged indecency, not immorality.

laid before them all the evidence bearing on every idle rumor about the University that had circulated in this community since 1872, the year the University was founded, and called to their attention how little it all amounted to.

Jury Was Unanimous

Reprinted from the Eugene Morning Register of March 8, 1919.

James Fullerton, who was found guilty by a jury Thursday night of the crime of libel against the University of Oregon, its president, P. L. Campbell, and the students, will be sentenced at 10 a. m. today, according to announcement of Judge G. F. Skipworth. That is the hour set by the judge after the verdict of the jury was rendered for the hearing of a motion for a new trial, but it is predicted that the motion will not be entertained.

Those close to the case believe that the sentence of Fullerton will be light, in view of the jury's recommendation that leniency be shown on account of his advanced age and some are of the opinion that he will be paroled with severe restrictions upon his actions during the time of his parole.

Only one ballot was taken by the jurymen Thursday night, the greater part of the time having been taken up with arguing whether Fullerton was entitled to leniency or not, according to one of the jurymen. All members of the jury were convinced of his guilt, say the jurymen, but some felt sorry for him and did not desire to see him serve a long term in jail.

"The Slanderer's Fate"

An editorial reprinted from the Eugene Morning Register of March 8, 1919.

For a period of time extending over several years the University of Oregon has been made the object of vicious and unprincipled attacks, and in those parts of the state where it was not known that the attacker was an unbalanced and vindictive individual of no standing there has been some wonderment as to what might lie behind the charges so freely scattered about. The question has been answered by the jury that brought in its verdict night before last in the case of the state versus James Fullerton. The charges were based upon nothing more definite than the imaginings of a salacious mind. The whole nauseating tale of immorality, when reduced to cold terms of evidence in court, became nothing but a tissue of hearsay, embroidered with falsehood.

But the outcome of the trial, which has attracted considerable attention, is more than just vindication of the University of Oregon—which needs

no vindication in the eyes of those familiar with its work and its ideals. The verdict of the jury in this case is a warning to all other irresponsibles that they cannot, relying merely upon the fact that they are judgment-proof, embark upon a career of slander and vituperation and hope to get off scot-free. Free speech is not to be interpreted as free libel, and merely because a man happens to be beyond the reach of civil judgments is no good reason why he should be permitted to blacken the character of honest and reputable men and institutions. It is reassuring to know that there is a way to deal with those who attempt it.

The whole affair fixes in a way that is of interest and value the status of the average guttersnipe publication—with which, by the way, Eugene has been by no means unfamiliar in the last dozen years or so. It may be set down as a rule from which there will be few exceptions that the person who is unable to gain a hearing through the columns of legitimate and responsible newspapers is not one whose utterances are worthy of attention.

The Sentence

Reprinted from the Eugene Daily Guard of March 8, 1919.

James Fullerton, convicted of publishing libelous articles about the University, President Campbell, the faculty and students, was this morning sentenced by Judge Skipworth to one year in jail, one month to be served and the other eleven months to be suspended on good behavior.

In passing the sentence Judge Skipworth stated that he was giving a heavy penalty, but that he was also exercising leniency in granting the suspension. He declared that consideration had been given the age of the defendant and his evident ill health and imposed the condition that Fullerton print no more defamatory articles about the University or those connected with it.

Fullerton declared that he would discontinue the publication of the "Hornet." The motion for a new trial made by H. E. Slattery, attorney for the defense, was denied.

The Penalty

Reprinted from the Eugene Morning Register of March 9, 1919

James Fullerton, convicted by a jury in circuit court on the charge of criminal libel against the University of Oregon, President Campbell and the students, is now in the county jail, having been sentenced by Judge Skipworth yesterday forenoon to serve a term of one year, the maximum penalty, but after having served 30 days he will be paroled to the court for the 11 remaining months.